

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Texas Grace Communications	)	File No. BRH-19960201MB
	)	as modified by BMPH-19990217IB
Request to Toll the Period to Construct Unbuilt	)	Facility ID No. 79024
Station KRZB(FM), Archer City, TX	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 31, 2014**

**Released: July 31, 2014**

By the Commission:

1. The Commission has before it an Application for Review filed on January 21, 2009, by Texas Grace Communications (“Texas Grace”), permittee of unbuilt station KRZB(FM), Archer City, Texas. We affirm herein two December 19, 2008 Media Bureau (“Bureau”) *Staff Decisions*<sup>1</sup> which denied Texas Grace’s two separate requests for more construction time, and deny review.

2. The KRZB(FM) construction permit (“Permit”) was granted in 1996 as a “singleton,” with a then-standard 18 month construction deadline of April 7, 1998. Much of its considerable history is set forth in the *Staff Decisions* and in two Commission decisions, *Texas Grace I and II*. *Texas Grace I* provided three additional construction years by waiver of the Commission rule relating to broadcast construction periods, Section 73.3598(a).<sup>2</sup>

3. We have reviewed the record, conclude that the Bureau properly decided the matters raised below, and uphold the *Staff Decisions* for the reasons stated therein. We specifically note that there is no basis for Texas Grace’s contention that it has not received adequate time to complete station construction. Indeed, according to our calculations the permittee has received more time than the *additional* 36-month period granted in *Texas Grace I*.<sup>3</sup>

<sup>1</sup> See *Letter from Peter Doyle, Chief, Audio Division to Dave Garey*, Ref. 1800B3-MJW (MB Dec. 19, 2008) (“*Staff Decision P*”); *Letter from Peter Doyle, Chief, Audio Division to Dave Garey*, Ref. 1800B3-IB (MB Dec. 19, 2008) (“*Staff Decision IP*”) (collectively, the “*Staff Decisions*”).

<sup>2</sup> See *Texas Grace Communications*, 16 FCC Rcd 19167, (2001) (“*Texas Grace I*”) (adding three years by waiver of the rule to period of more than three years received between 1996 and 2001); *Texas Grace Communications*, 20 FCC Rcd 4820 (2005) (“*Texas Grace II*”) (dismissing, as untimely, Texas Grace’s Application for Review and Petition for Reconsideration, and declining to provide it more time due to other events). The Commission granted Texas Grace additional time by waiving 47 C.F.R. § 73.3598(a), rather than, as Texas Grace had requested, by tolling the construction period pursuant to 47 C.F.R. § 73.3598(b), because Texas Grace’s circumstances did not meet those specified in that rule section and also because permittees that had already received at least three unencumbered years from original grant no longer qualified for tolling. See *Texas Grace I*, 16 FCC Rcd at 19174, n.13 (noting that Texas Grace had already received over four years to construct); *1998 Biennial Review, Streamlining of Mass Media Applications, Rules, and Processes, Report and Order*, 13 FCC Rcd 23056, 23090-93 (1998), *modified in part, Memorandum Opinion and Order*, 14 FCC Rcd 17525, 17538-40 (1999) (“*Streamlining*”).

<sup>3</sup> *Texas Grace I* at 19174. We calculate that Texas Grace received approximately 44 unencumbered months since *Texas Grace I*, albeit in three segments of 19 months, 5 1/2 months, and 19 1/2 months each. Specifically, the three-year period began on October 26, 2001, and ran unencumbered until an error by the Federal Aviation Administration (“FAA”) on June 5, 2003 (a period of approximately 19 months). The FAA error was resolved three years later on June 5, 2006. When the Commission reinstated the KRZB license for these FAA matters it provided 25 months to

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4. Texas Grace's argument is premised on its apparent belief that when, in 2001, the Commission extended its Permit by three years, it entitled Texas Grace to a "clean, unencumbered, protected-rights construction permit for a seamless full term 3-year period of time."<sup>4</sup> The Commission expressed no intent whatsoever that the KRZB(FM) construction period, if interrupted by events subsequent to that ruling, should result in the award of a new three-year construction period without regard to unencumbered time already elapsed.<sup>5</sup> The permittee's expansive reading of *Texas Grace I* is entirely inconsistent with the goal of the Commission's strict broadcast station construction policy – to provide a sense of urgency for prompt initiation and completion of construction by eliminating practices that could be used to "tie up" spectrum indefinitely.<sup>6</sup> The starts and stops of the construction period clock, which Texas Grace considers "encumbrance[s] of the worst magnitude,"<sup>7</sup> are not encumbrances at all, but rather the result of the routine application of the *Streamlining* licensing policy which requires diligent construction efforts when a permit is unencumbered but which holds a permittee harmless for those periods when the permit is encumbered by the events specified in Section 73.3598(b) or by events of a similar magnitude found to warrant a waiver of Section 73.3598(a). Despite having repeatedly petitioned for and benefited from such tolling, Texas Grace has failed to timely construct its station. Under these circumstances, nearly 18 years after the initial grant of the Permit to Texas Grace, we agree with the Bureau that it was not entitled to additional time to do so.

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,<sup>8</sup> and Section 1.115(g) of the Commission's Rules,<sup>9</sup> the Application for Review filed by Texas Grace Communications IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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complete construction – well more than the balance which remained on the three-year *Texas Grace I* period. That 25-month period then ran unencumbered from resolution of the FAA matter on June 5, 2006 through November 16, 2006 (approximately 5 ½ months) when it became encumbered again by a petition by LKCM Radio Group, LP. Following dismissal of that petition on August 22, 2008, the Permit ran unencumbered through the Permit's revised expiration date of April 9, 2010, a period of 19 months and 18 days.

<sup>4</sup> Application for Review at 2-3.

<sup>5</sup> Indeed, the Commission believed at that time that, having already received over four years to construct the station, plus the additional three that the Commission granted it, Texas Grace would not receive *any* additional time beyond the extended deadline of October 26, 2004 regardless of any circumstances that might arise. *See Texas Grace I*, 16 FCC Rcd at 19174 n.13. *See also Texas Grace II*, 20 FCC Rcd at 4824.

<sup>6</sup> *See Streamlining*, 14 FCC Rcd at 17539.

<sup>7</sup> Application for Review at 3.

<sup>8</sup> 47 U.S.C. § 155(c)(5).

<sup>9</sup> 47 C.F.R. § 1.115(g).